37 Am. Jur. 2d Fraud and Deceit § 58

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit
George Blum, J.D., John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Karl Oakes, J.D. and Eric C. Surette, J.D.

III. Means of Perpetration

C. Obtaining Goods or Services with Intent Not to Pay

§ 58. Effect of insolvency and concealment thereof, or act of bankruptcy

Topic Summary | Correlation Table | References

> **West's Key Number Digest**
> West's Key Number Digest, Fraud⚷27, 28

The rule that an acquisition of goods with the intent not to pay therefor is fraudulent is particularly applicable where the purchaser is insolvent and conceals that fact from the seller.[1] The rule has been held to obtain where a person's indebtedness, to his or her knowledge, largely exceeds in amount the value of his or her property; and where the person did not intend or expect to pay and has no reasonable expectation of paying;[2] and where he or she is insolvent or in failing circumstances and has a preconceived intention not to pay for the goods, or no reasonable expectation of being able to do so, and fraudulently conceals or misrepresents the facts.[3] Thus, concealment of insolvency, with no reasonable expectation of paying, renders a sale fraudulent.[4]

Footnotes

[1]   Manly v. Ohio Shoe Co., 25 F.2d 384, 59 A.L.R. 413 (C.C.A. 4th Cir. 1928); J. J. Smith Lumber Co. v. Scott County Garbage Reducing & Fuel Co., 149 Iowa 272, 128 N.W. 389 (1910).
        As to the presumption of an intent not to pay, from insolvency, see § 465.

[2]   Luhrig Coal Co. v. Ludlum, 69 Ohio St. 311, 69 N.E. 562 (1903).

[3]   Manly v. Ohio Shoe Co., 25 F.2d 384, 59 A.L.R. 413 (C.C.A. 4th Cir. 1928).

[4]   Manly v. Ohio Shoe Co., 25 F.2d 384, 59 A.L.R. 413 (C.C.A. 4th Cir. 1928).

End of Document